

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT  
State: DELAWARE  
REQUIREMENTS FOR ADVANCE DIRECTIVES UNDER STATE PLANS  
FOR MEDICAL ASSISTANCE

The Death with Dignity Law (Title 16, Chapter 25 of the Delaware Code) authorizes a living will to direct that "maintenance medical treatment" be withheld or withdrawn.

DEFINITIONS:

Terminally Ill- Any disease, illness, or condition from which there is no reasonable medical expectation of recovery and which, as a medical probability, will result in death regardless of the use or discontinuance of medical treatment implemented for the purpose of sustaining life.

Maintenance Medical Treatment- Any medical or surgical procedure or intervention which utilizes mechanical or other artificial means to sustain, restore, or supplant a vital function; and which would serve only to artificially prolong the dying process. The "maintenance medical treatment" shall not include the administration of medication, nor the performance of any medical procedure necessary to provide comfort care or to alleviate pain.

Artificial Means- Manufactured or technical contrivances which may be attached to or integrated into the human body, but which are not a part of the human body.

In Delaware, there have been no court cases or legislative directives to clarify which procedures would definitely be included within the meaning of "maintenance medical treatment". Medication and comfort-care measures are not considered to be "maintenance medical treatment".

The definition of durable powers of attorney is located in Title 12 of the Delaware Code, Chapter 49, Section 4901.

There is no expressed provision identifying whether the State law allows for a health care provider or agent of the provider to object to the implementation of advance directives on the basis of conscience.

The official statement of Delaware's law on advance directives, prepared by Delaware's Committee on the Patient Self-Determination Act and adopted by the State's Board of Health, begins on Attachment 4.34-A, Page 1b Addendum.

TN No. SP-320

Supersedes

TN No. new page and information.

Approval Date FEB 12 1993 Effective Date OCT 01 1992

## YOUR RIGHTS TO DECIDE ABOUT YOUR HEALTH CARE

### WHO DECIDES WHAT HEALTH CARE I GET?

As a competent adult, you have the legal right to make your own health care decisions. Your doctor or another health care professional may advise you and make recommendations about treatment. You have the right to receive this information in a way you can understand. You have the authority to say "yes" to any treatment that is offered to you, and to say "no" to any treatment that you don't want.

### WHAT IF MY MEDICAL CONDITION MAKES ME UNABLE TO DECIDE?

In Delaware, if you are at least 18 years old you may make a written "advance directive" to accept or refuse most health care treatments or procedures. Your advance directive will tell your doctor what you want if you become unable to decide yourself. Under Delaware law you may use any of three types of advance directives: 1) A Living Will, 2) An appointment of a Health Care Agent, or 3) A Durable Power of Attorney for Health Care.

### WHAT IS A LIVING WILL?

A Living Will is a written statement of your wishes about the use of life sustaining procedures if you are in a terminal condition. You are in a terminal condition if your condition will result in your death. You may not be in a terminal condition if you are in a persistent vegetative state. Two doctors must state in writing that you are in a terminal condition. You may state in your Living Will that, if you are in a terminal condition, you do not want any procedures that will artificially prolong the dying process.

If you want a Living Will, you must make it while you are still capable and competent to make health care decisions. Two witnesses who are at least eighteen years old must watch you sign. You must choose witnesses who are not members of your family, will not inherit anything from you when you die, and do not have to pay for your care. If you are in a hospital, nursing home or similar facility when you sign your Living Will, you must choose witnesses who are not employees of the facility. In addition, if you are in a nursing home or similar facility, one of the witnesses must be a Long Term Care Ombudsman or the Public Guardian.

### CAN A LIVING WILL OR OTHER ADVANCE DIRECTIVE COVER ANY TREATMENT OR CONDITION?

You may wish to refuse artificially provided food or water. You may wish to refuse life sustaining treatment even though you are not in a terminal condition. You may put your wishes in writing even though Delaware law makes no specific provision for doing so in a Living Will or other advance directive. Your wishes may not be honored in all situations, but they are more likely to be followed if you state them in writing.

### WHAT IS A HEALTH CARE AGENT?

Delaware law allows you to appoint another adult to be your Health Care Agent to make decisions about your health care if you become unable to decide yourself. The person you appoint has the power to make the same decisions about health care that you could make if you were able to decide yourself. Your doctor will determine when it is that you have lost the ability to decide for yourself.

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You may, if you wish, specify for your agent the types of health care decisions which you want carried out for you. These can include refusing life sustaining treatment as well as other medical decisions. Examples of other medical decisions are to consent to or refuse surgery or tests, or to get your medical records. However, you don't have to instruct your Health Care Agent in any particular way if you choose not to.

You must appoint your Health Care Agent in writing. You must sign the document and it should be witnessed in the same way as a Living Will.

#### WHAT IS A DURABLE POWER OF ATTORNEY FOR HEALTH CARE?

Another Delaware law allows you to have a document naming an adult to make health care decisions for you. This person must follow any instructions you give in the document.

You may include a Durable Power of Attorney for Health Care in a general durable power of attorney which would allow the person making decisions for you to act for you in virtually all matters - legal, personal and financial. You may also make a Durable Power of Attorney for Health Care a "stand alone" document. In either case, the document must be signed and should be witnessed in the same way as the other advance directives discussed here.

#### WHERE SHOULD I KEEP MY ADVANCE DIRECTIVE?

You should keep the original and give copies to family members, and to your doctor and other health care providers. It will become a part of your medical records. If you want, you can also give copies to close friends, your lawyer or your clergyman.

#### WHAT IF I CHANGE MY MIND?

You can revoke your advance directive at any time by destroying it, by making a new one, or by telling two people at the same time that you no longer wish your advance directive to be effective. You should also, in writing, inform your doctor or other health care provider and any health care agent you may have named of your decision to revoke.

#### WILL MY ADVANCE DIRECTIVE BE VALID IN ANOTHER STATE?

State laws vary considerably on advance directives. While the advance directive you make in one state may be good in another state, there is no guarantee of that. If you move to another state, you should make a new advance directive in that state.

#### WHAT HAPPENS IF I MAKE NO ADVANCE DIRECTIVE?

You don't have to make an advance directive if you don't want one. No doctor, hospital, nursing home or other health care provider can make you sign one before you get treatment. However, if you want your wishes on this subject honored, you should make an advance directive. Just telling your spouse, other family members or friends about your wishes may not be enough. Without an advance directive, a court may decide what health care you will or will not receive whenever you are unable to decide for yourself.

#### WHERE CAN I OBTAIN MORE INFORMATION?

If you would like more information about how to make an advance directive, about your rights to make health care decisions, or about other resources that may be able to help you, you should consult a lawyer or the Long Term Care Ombudsman at 1-800-223-9074 (New Castle County) or 1-800-292-1515 (Kent/Sussex County).

Date: November 1, 1991

TN No. SP-320

Supersedes

Approval Date

FEB 12 1993

Effective Date

OCT 01 1992

TN No. New page and information